

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket Nos. 2015-101-00120R thru 00130R

Parcel Nos. 14184-26034-01001, 14184-26034-01000, 14184-26033-01001,
14184-26032-01000, 14184-26028-01001, 14184-26028-01000, 14184-29012-01001,
14184-29012-01000, 14184-29010-01001, 14184-29035-01001, 14184-29035-01000

Sugar Creek Villas, LLC,

Appellant,

vs.

City of Cedar Rapids Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 16, 2016. Kerry Peyton, of High Property Management, Cedar Rapids represented Sugar Creek Villas, LLC. Chief Deputy Assessor Thomas Lee represented the City of Cedar Rapids Board of Review.

Sugar Creek Villas, LLS (SCV) owns ten bi-attached, two-story townhome-style condominium units built in 2014. All are single-family properties with a residential classification. All of the units have a 2015 assessed land value of \$12,000. The following chart is a summary of the properties and the 2015 assessments. (Exs. B & K).

Address	Docket #	Parcel #	Improvement Assessed Value	Total 2015 Assessed Value
2050 Sugar Creek Dr NW, Unit A	2015-101-00120R	14184-26034-01001	\$111,900	\$123,900
2050 Sugar Creek Dr NW, Unit B	2015-101-00121R	14184-26034-01000	\$111,800	\$123,800
2054 Sugar Creek Dr NW, Unit A	2015-101-00122R	14184-26033-01001	\$111,800	\$123,800
2058 Sugar Creek Dr NW, Unit A	2015-101-00123R	14184-26032-01000	\$105,500	\$117,500
2108 Sugar Creek Dr NW, Unit A	2015-101-00124R	14184-26028-01001	\$111,800	\$123,800
2108 Sugar Creek Dr NW, Unit B	2015-101-00125R	14184-26028-01000	\$113,100	\$125,100
2123 Sugar Creek Dr NW, Unit A	2015-101-00126R	14184-29012-01001	\$106,600	\$118,600
2123 Sugar Creek Dr NW, Unit B	2015-101-00127R	14184-29012-01000	\$90,500	\$102,500
2135 Sugar Creek Dr NW, Unit A	2015-101-00128R	14184-29010-01001	\$111,800	\$123,800
2171 Sugar Creek Dr NW, Unit A	2015-101-00129R	14184-29035-01001	\$111,800	\$123,800
2171 Sugar Creek Dr NW, Unit B	2015-101-00130R	14184-29035-01000	\$111,800	\$123,800

2123 Sugar Creek Drive, NW, Unit B, has 927 square-feet of gross living area (GLA). The remaining units have 1156 square-feet of GLA. All of the units have a full basement, one-car attached garage, an open porch, and either a deck or patio.

On its protests to the Board of Review, SCV asserted the properties were assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). The Board of Review denied the petitions.

SCV then appealed to PAAB, reasserting its claims of overassessment. It believes the correct fair market value for each of the subject properties is \$49,300.

Findings of Fact

Kerry Peyton, Vice President of High Property Management (HPM), testified on behalf of SCV. Peyton explained the City of Cedar Rapids entered into a contract with the Iowa Department of Economic Development to administer grants for disaster recovery. (Ex. 2). She stated the subject properties were built under the multi-family, new construction, disaster relief program known as HOME.

HPM received a \$3,000,000 forgivable note from the City of Cedar Rapids to build the SCV development that includes twenty properties, ten of which are the subject properties that must adhere to the requirements of the HOME program. Peyton testified

that the Department of Housing and Urban Development (HUD) determines the rents that can be charged for the low-income housing units that are part of the HOME program. Further, the record shows that “the Section 8 income definition...is used to determine income levels for the program rental participants, and said income limits are then used to calculate the rent limits...” (Ex. 2, p. 2).

The rent-restricted subject properties currently receive \$800 per-month, compared to the market-rent units that receive \$1100 per-month. As part of the forgivable note, Peyton stated the subject properties cannot be sold for ten years, which she asserts devalues them. For the forgoing reasons, SCV believes the subject properties should be assessed similarly to Section 42 housing, which also has restricted rents.

SCV also submitted a Section 42 property, located at 2043 Sugar Creek Drive NW as a comparable, which has a 2015 assessment of \$46,100. This property is a one-story property with 1081 square-feet and an attached garage. (Ex. L). It has not recently sold.

SCV submitted an opinion letter written by Jonathan Westercamp, Senior Analyst with Appraisal Associates Company, Cedar Rapids. (Ex. 1). We do not find it necessary to recite Westercamp’s letter, because it provides only generalities about the Cedar Rapids market and does not provide any opinion of value for the subject properties. We give it no consideration.

Chief Deputy Assessor Thomas Lee testified for the Board of Review. Lee notes the comparable offered by SCV, is a Section 42 property and required to be valued, for assessment purposes, under the requirements of Iowa Code 441.21(2) and Administrative Code 701-71.5(2). The subject properties are not part of the Section 42 program and therefore are not eligible to be valued in the same manner as the comparable submitted by SCV. (Ex. A).

The Board submitted five properties it considered comparable to the subject property. (Ex. N). The sales occurred in 2011 and 2012, and we do not find them relevant to a 2015 market value opinion. Moreover, they were unadjusted for differences. We give this evidence no consideration.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Unless subject to an exception in section 441.21, Iowa property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

Iowa Code section 441.21 requires that the sales comparison approach to value be used to determine a property's fair market value unless its market value cannot be established by that method of valuation. Only where the parties convince PAAB that comparable sales do not exist or cannot readily determine market value than other factors such as cost and income can be used. *Id.* at 398 (emphasis added) (citing *Soifer*, 759 N.W.2d at 782); *Carlton Co. v. Bd. of Review of City of Clinton*, 572 N.W.2d 146, 150 (Iowa 1997); § 441.21(2).

Property that is leased to rent to low-income individuals and families under Internal Revenue Code section 42 is to be valued based on its productive and earning

capacity from the actual rents received. § 441.21(2). Further, the assessor is to take into account the extent to which that use and limitation reduces the property's market value. *Id.* The Iowa Department of Revenue has adopted rules for valuing section 42 housing in Iowa Admin. R. 701-71.5(2), which basically applies a direct capitalization approach using the property's actual rents. Thus, Iowa law recognizes that section 42 housing is an exception to the market valuation requirement.

SCV asserts that because its properties are subject to rent restrictions as low-income housing, its assessments should be similar to that of other rent-restricted properties, like Section 42 housing. While there may be wisdom to SCV's policy argument, current Iowa law only recognizes an exception for Section 42 housing. This Board does not have the authority to add exceptions where the legislature did not provide them. Because it is admitted that the subject properties are not Section 42 housing, we find the subject's assessment must be set at its market value consistent with Iowa Code section 441.21(1).

On appeal, SCV claims that its properties are assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b). To prevail on this claim, the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). This is typically done by providing an appraisal of the property or comparable sales adjusted for differences. In cases where the subject's value cannot be readily established by the sales approach, then value opinions by the income and/or cost approach may be considered.

In support of its claim, SCV submitted one comparable for consideration, a Section 42 housing property located at 2043 Sugar Creek Drive NW. It is assessed according to the requirements of Iowa Code section 441.21(2) and Admin. Code R. 701-71.5(2). Generally comparing assessments is insufficient support for an over assessment claim. That is especially true here as the subject properties and 2043 Sugar Creek Drive NW are assessed using different valuation methodology. Further, 2043 Sugar Creek Drive NW has not recently sold and is of no value in determining the subjects' fair market values.

SCV also asserts that because it cannot sell the properties for ten years the market value of the properties is adversely affected. For the same reason, it also believes the sales comparison approach cannot be used to value these properties and the properties should be valued based on their earning capacity. It believes its earning capacity is reduced because it is required to charge below-market rents.

The properties were funded through a HOME program that provided the developer with a \$3,000,000 up-front, forgivable loan to build the units as part of a disaster recovery effort. As a result, the properties are subject to the requirements of the program, which enforce rent-restrictions on a portion of the units, and state the units cannot be sold for a ten-year period. After ten years, the properties may be sold for full market value. Moreover, SCV chose to accept the forgivable loan and as a result, accepted the binding requirements of the HOME program. We do not find this voluntary agreement affects the valuation method that should be applied to the subject properties or diminishes their market values. See *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 789 (Iowa 2009) (“our cases do not support a reduction in market value based on a property owner’s self-imposed restrictions.”). Moreover, focusing solely on the agreement’s restrictions ignores the value generated to SCV from the agreement and the properties’ use in conformance thereof – namely the \$3,000,000 forgivable loan.

Furthermore, Iowa courts have consistently held the income approach to determine market value should be completed using objective rental income, not actual rental income. *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W.2d 419 (Iowa 1997); *Oberstein v. Adair County Bd. of Review*, 318 N.W.2d 817 (Iowa Ct. App. 1982). Valuing the subject based solely on the actual rents received would be contrary to Iowa law.

Lastly, even if we were to accept that the subject properties should be valued based on their actual rents, like section 42 housing, or their value should be reduced because of restrictions on their use, SCV has not submitted its own valuation of the properties based on its preferred valuation methods. For these reasons, we do not find SCV has submitted sufficient evidence its properties are over assessed.

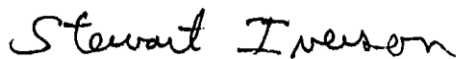
Order

IT IS THEREFORE ORDERED that the City of Cedar Rapids Board of Review's actions are affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

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City of Cedar Rapids Board of Review by eFile